

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LEROY G. STERLING : CIVIL ACTION
 :
 v. :
 :
 :
 COURT OF COMMON PLEAS OF :
 PHILADELPHIA COUNTY, :
 FAMILY COURT DIVISION; :
 HONORABLE NICHOLAS KOZAY, JR. :
 Philadelphia Family Court Judge; :
 ANDREA PAUL WOOD, ESQ., Counsel for : NO. 96-8218
 Shauneille Sterling; SHAUNEILLE STERLING:

MEMORANDUM

R.F. KELLY, J.

JANUARY 30, 1998

Plaintiff Leroy Sterling brings this action pro se in the form of a one-page complaint alleging that the Defendants, Court of Common Pleas of Philadelphia County, Family Court Division; The Honorable Nicholas Kozay, Jr. Andrea Paul Wood, Esquire; and Shauneille Sterling violated his constitutional rights. Plaintiff alleges that the Defendants violated his rights as follows:

Caused and or found me to be in violation
of a court order which did not exist.

Utilized tortious procedures and practices
to arrest, prosecute, and imprisoned me.

Circumvented and or failed to adhere to
Federally mandated support guidelines in
the determination of additional support
payments.

Falsely imprisoned me.

Eluded due process and supremacy clause.

These wrongdoings are alleged to have occurred on December 13, 1994. The complaint does not make a specific request for relief.

Presently before the court is the summary judgment motion

of the Defendant Andrea Paul Wood, Esquire.¹

Plaintiff's claims are based on a December 13, 1994 Order of the Court of Common Pleas of Philadelphia which held that Plaintiff was guilty of civil contempt of an earlier court order entered in a divorce proceeding between Plaintiff and his wife. Defendant Wood, a licensed Pennsylvania attorney, represented Plaintiff's wife in the state court proceeding. (See Exhibit B to Defendant's motion.) As a result of the December 13, 1994 finding of contempt, Plaintiff was remanded to the custody of the sheriff.

Plaintiff had filed a prior action against the Defendant Wood claiming that he had been defamed by her. On August 17, 1995, that action was dismissed. (See Exhibit C of Defendant's motion.)

The doctrine of collateral estoppel bars the relitigation in a later action of an issue of fact or law which was previously litigated. Clark v. Troutman, 509 Pa. 336, 340, 201 A.2d 137, 139 (1985). Collateral estoppel applies if (1) the issue is identical to an issue decided in prior case; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party in the prior case or in privity therewith; (4) the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior proceeding; and (5) the determination in the prior proceeding was essential to the judgment. City of Pittsburgh v. Zoning Board of Adjustment of City

¹On September 25, 1997, I signed an Order granting the Defendants, Honorable Nicholas Kozay, Jr. and Court of Common Pleas of Philadelphia County, Family Court Division's Motion to Dismiss.

of Pittsburgh, 522 Pa. 44, 559 A.2d 896, 901 (1989).

A comparison of the complaint in the present case and the Opinion and Memorandum of the Superior Court of Pennsylvania and the state court complaint filed against the Defendant Wood, indicates that both law suits deal with the same basic issues. There has been a final judgment on the merits in the state court which Plaintiff has either exhausted by appeal or has not been pursued on appeal. The Plaintiff in this action is the same Plaintiff or Petitioner in the prior state court action. The Opinion and Memorandum in the State Superior Court clearly demonstrates that the Plaintiff had a full and fair opportunity to litigate the issues in the state court.

I therefore find that the doctrine of collateral estoppel forecloses Plaintiff from relitigating this matter.

Judgment in this case should also be entered in favor of the Defendant Wood for the reason that Plaintiff is attempting by this federal law suit, to have the federal court review a decision of a state court. We are precluded from doing this under Title 28 U.S.C. § 1257. See also District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303 (1983).

Also before this Court is Plaintiff's Motion for Default Judgment against Defendant Shauneille Sterling, his former wife. It appears from the record that the complaint has been served on her and that she has neither filed an answer to the complaint nor has she had an attorney enter an appearance for her.

When an application is made to the court under Rule

55(b)(2) for the entry of a judgment by default, the district judge is required to exercise his "sound judicial discretion" in determining whether the judgment should be entered. "Sound judicial discretion" has been defined as:

the power exercised by courts to determine questions to which no strict rule or [sic] law is applicable, but which from their nature, and circumstances, are controlled by personal judgment of the court.

This element of discretion makes it clear that the party making the request is not entitled to a default judgment as of right, even when defendant is technically in default and that fact has been noted under Rule 55(a). See Wright, Miller & Kane, Federal Practice and Procedure § 2685.

When an action is brought against several defendants, charging them with joint liability, as in the present case, a question may arise as to the effect of a default by fewer than all defendants. As a general rule, in such a case, judgment should not be entered against the defaulting party until the matter has been adjudicated with regard to all defendants who have not defaulted. In the present case, all claims against the other Defendants have now been dismissed.

In the case of Allen v. McCurry, 101 S.Ct. 411, (1980) the Supreme Court ruled that issue preclusion applies in a section 1983 action so as to foreclose a state criminal defendant from relitigating matters that were decided by the state court after a full and fair opportunity to litigate.

As with the claim against Andrea Paul Wood, Esq., the

claim against Shauneille Sterling deals with the same basic issues as the state court's case. The Opinion and Memorandum in the State Superior Court clearly demonstrates that the Plaintiff had a full and fair opportunity to litigate the issues in the state court.

I therefore find that the doctrine set forth in Allen v. McCurry, supra, forecloses Plaintiff from relitigating those matters as to Shauneille Sterling.

I therefore enter the following Order:

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LEROY G. STERLING	:	CIVIL ACTION
	:	
v.	:	
	:	
COURT OF COMMON PLEAS OF	:	
PHILADELPHIA COUNTY,	:	
FAMILY COURT DIVISION;	:	
HONORABLE NICHOLAS KOZAY, JR.	:	
Philadelphia Family Court Judge;	:	
ANDREA PAUL WOOD, ESQ., Counsel for	:	NO. 96-8218
Shauneille Sterling; SHAUNEILLE STERLING	:	

O R D E R

AND NOW, this 30th ay of January, 1998 the motion of Andrea Paul Wood, Esquire for Summary Judgment is hereby GRANTED.

The motion of Plaintiff Leroy G. Sterling for a default judgment against Shauneille Sterling is hereby DENIED.

Judgment is hereby entered in favor of Defendants Andrea Paul Wood, Esq. and Shauneille Sterling and against the Plaintiff Leroy G. Sterling.

It appearing that the above action has been DISMISSED as to all Defendants who have been served or appeared, the clerk's office is directed to mark the above captioned case Closed.

BY THE COURT:

Robert F. Kelly,

J.

